

Dear Friend of the Firm,

Approximately twenty-five years ago, on October 12, 1984, then President Ronald Reagan signed the Comprehensive Crime Control Act as part of a continuing appropriations bill. A portion of that bill, the Sentencing Reform Act of 1984, simultaneously created the U.S. Sentencing Commission, and instructed the Commission to create sentencing guidelines for our federal criminal courts.

It is our opinion that this congressional legislation signed into law by the executive branch was an affront to the sentencing discretion of the judicial branch. For nearly 16 years, a defendant in federal court all too often was sentenced to a draconian prison term often solely based upon the whims of prosecutors and the non-legally trained, and often slanted, view point of the United States Probation Office while federal district court judges were often left powerless to use their wisdom and knowledge in crafting a fair and just sentence. This tainted system began to change with the dawn of the new millennium. Beginning with *Apprendi* in 2000, the Supreme Court of the United States started to reassert the judicial branch's constitutional authority to govern the sentencings of federal defendants. As you will see from this time line, it was a long time coming and as a result thousands of federal defendants continue to sit in prison for unjust and unconstitutional reasons. While progress has been made, in our opinion, there is much work still to be done.

Thus, our legal fight lives on and our dream for justice will not die. Until there is fairness in every single federal sentencing, we here at O'Brien Bower, P.A. will never stop fighting for the rights of our clients and indirectly the rights of federal defendants everywhere. In the meantime, we hope that our timeline detailing the significant dates and decisions in the history of the federal sentencing guidelines helps you to better understand the system that you are up against. Should you desire a free consultation regarding sentencing or any other issues related to your case, please do not hesitate to call us collect at (813) 250-3553.

Kindest regards,

Mark J. O'Brien and T. Federico Bower

SIGNIFICANT DATES AND DECISIONS IN THE HISTORY OF THE FEDERAL SENTENCING GUIDELINES

1984 Sentencing Reform Act of 1984

Part of the Comprehensive Crime Control Act, the Sentencing Reform Act is signed into law by President Reagan on October 12, 1984.

1985 The U.S. Sentencing Commission meets for the first time in October of 1985.

1987 The sentencing guidelines take effect on November 1, 1987.

1989 *Mistretta v. United States*, 488, U.S. 361 (1989)

The Supreme Court upholds the constitutionality of the U.S. Sentencing Commission as an independent agency in the judicial branch.

2000 Apprendi v. New Jersey, 530 U.S. 466 (2000)

The Supreme Court held that the Sixth Amendment requires that “other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” The decision primarily affects sentences for convictions in drug cases, since the maximum penalties in those cases vary depending on the type and amount of drugs involved.

2002 Ring v. Arizona, 536 U.S. 584 (2002)

The Supreme Court held that the Sixth Amendment right to a jury trial extends to the determination of any fact, other than a prior conviction, that increases the maximum punishment for first degree murder from life imprisonment to death.

2004 Blakely v. Washington, 542 U.S. 296 (2004)

The Supreme Court held that judicial application of an enhanced range under the Washington state guidelines violated the defendant’s right to a jury trial under the Sixth Amendment.

2005 United States v. Booker and United States v. Fanfan, 543 U.S. 220 (2005)

The Supreme Court held in the consolidated cases of *United States v. Booker* and *United States v. Fanfan* that mandatory application of the federal sentencing guidelines violated the defendant’s right to a jury trial under the Sixth Amendment. The Court remedied the Sixth Amendment violation by making the guidelines advisory, and instructed the appellate courts to review sentences for “reasonableness.”

2007 Rita v. United States

The Supreme Court held that a court of appeals may apply a presumption of reasonableness to a district court sentence within the guidelines.

2007 Gall v. United States, 552 U.S. 38 (2007)

The Supreme Court stated that the district court should begin all sentencing proceedings by correctly calculating the applicable guideline range. Furthermore, the Court held that the courts of appeals must review all sentences - whether inside, outside, or significantly outside the guideline range - under a deferential abuse of discretion standard.

2007 Kimbrough v. United States, 552 U.S. 85 (2007).

The Supreme Court ruled that a district judge must include the guideline range in the array of factors warranting consideration at sentencing, but the court may consider the disparity between the guidelines’ treatment of crack and powder cocaine offenses in determining the sentence.